

**AGREEMENT
BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE EUROPEAN ECONOMIC COMMUNITY
CONCERNING THE APPLICATION OF THE GATT AGREEMENT
ON TRADE IN CIVIL AIRCRAFT
ON TRADE IN LARGE CIVIL AIRCRAFT**

THE GOVERNMENT OF THE UNITED STATES OF AMERICA, hereinafter referred to as "the US", and THE EUROPEAN ECONOMIC COMMUNITY, hereinafter referred to as "the Community",

RECOGNIZING the need to promote a more favorable environment for international trade in large civil aircraft and to reduce trade tensions in the area;

RECOGNIZING that the disciplines in the GATT Agreement on Trade in Civil Aircraft should be strengthened with a view to progressively reducing the role of government support;

RECALLING the principles and objectives agreed upon by representatives of the US and of the Community at their meeting held in London 27 October 1987;

IN PURSUIT OF their common goal of preventing trade distortions resulting from direct or indirect government support for the development and production of large civil aircraft and of introducing greater disciplines on such support and of encouraging the adoption of such disciplines multilaterally within the GATT,

NOTING their intention to act without prejudice to their rights and obligations under the GATT and under other multilateral agreements negotiated under the auspices of the GATT, HAVE AGREED AS FOLLOWS:

ARTICLE 1

**Government-Directed Procurement,
Mandatory Sub-contracts and Inducements**

With respect to issues concerning Article 4 of the GATT Agreement on Trade in Civil Aircraft (hereinafter referred to as the "Aircraft Agreement"), the Parties agree to act in conformity with the interpretative note to Article 4 of the Aircraft Agreement contained in Annex I of this Agreement.

ARTICLE 2

Prior Government Commitments

Government support to current large civil aircraft programmes, committed prior to the date of entry into force of this Agreement, is not subject to the provisions of this Agreement except as otherwise provided below. The terms and conditions on which such support is granted shall not be modified in such a manner as to render it more favorable to the recipients; however, de minimis modifications shall not be deemed inconsistent with this provision.

ARTICLE 3

Production Support

AS of entry into force of this Agreement, the Parties shall not grant direct government support other than what has already been firmly committed for the production of large civil aircraft. This prohibition shall apply both to existing and to future programmes.

ARTICLE 4

Development Support

4.1. Governments shall provide support for the development of a new large civil aircraft programme only where a critical project appraisal, based on conservative assumptions, has established that there is a reasonable expectation of recoupment, within 17 years from the date of first disbursement of such support, of all costs as defined in Article 6(2) of the Aircraft Agreement, including repayment of government supports on the terms and conditions specified below.

4.2. As of entry into force of this Agreement, direct government support committed by a party for the development of a new large civil aircraft programme or derivative shall not exceed:

- (a) 25 per cent of that programme's total development cost as estimated at the time of commitment (or of actual development costs, whichever is lower); royalty payments on this tranche shall be set at the time of commitment of the development support so as to repay this support at an interest rate no less than the cost of borrowing to the government within, no more than 17 years of first disbursement, plus

- (b) 8 per cent of that programme's total development cost as estimated at the time of commitment (or of actual development costs, whichever is lower); royalty payments on this tranche shall be set at the time of commitment of the development support so as to repay such support at an interest rate no less than the cost of borrowing to the government plus 1 per cent within no more than 17 years of first disbursement.

These calculations shall be made on the basis of the forecast of aircraft deliveries in the critical project appraisal.

4.3. Royalty payments per aircraft shall be calculated at the time of commitment of the development support to be repaid on the following basis:

- (a) 20 per cent of aggregate payments calculated in accordance with Article 4.2. are payable on the basis of the delivery of a number of aircraft corresponding to 40 per cent of forecast deliveries;
- (b) 70 per cent of aggregate payments calculated in accordance with Article 4.2. are payable on the basis of the delivery of a number of aircraft corresponding to 85 per cent of forecast deliveries.

ARTICLE 5

Indirect Government Support

5.1. The Parties shall take such action as is necessary to ensure that indirect government support neither confers unfair advantage upon manufacturers of large civil aircraft benefiting from such support nor leads to distortions in international trade in large civil aircraft.

5.2. As of entry into force of the Agreement, identifiable benefits to the development or production of any of the products covered by this Agreement, net of recoupment, derived from indirect support shall not exceed in any one year:

- (a) 3 per cent of the annual commercial turnover of the civil aircraft industry in the Party concerned for the products covered by this Agreement, or
- (b) 4 per cent of the annual commercial turnover of any one firm in the Party concerned for the products covered by this Agreement.

5.3. Benefits from indirect support shall be deemed to arise when there is an identifiable reduction in costs of large civil aircraft resulting from government-funded research and development in the aeronautical area performed after the entry into force of this Agreement.

Where it can be demonstrated that the results of research and development have been made available on a nondiscriminatory basis to large civil aircraft manufacturers of the Parties, benefits deriving from such technologies shall be excluded from the calculation in Article 5.2. However, identifiable benefits may result when large civil aircraft manufacturers are responsible for, or have early access to, the conduct or results of such research.

If a Party has reason to believe that other indirect supports provided by a government are resulting in identifiable reductions in the costs of large civil aircraft, the Parties shall consult with a view towards quantifying such reductions and including them in the calculation described above.

Benefits from indirect support resulting from the technology obtained through government-funded research and development or through other government programmes shall normally be calculated in terms of the reduction in the cost of research and development and in the reduction in the cost of the production equipment or production process technology.

ARTICLE 6

General Purpose Loans

The Parties shall assume no liability for specific loans that aircraft manufacturers make or make available, through direct loans, guarantees, or otherwise, to airlines, other than through official export credit financing consistent with the Large Aircraft Sector Understanding of the OECD Understanding on Official Export Financing.

ARTICLE 7

Equity Infusions

Equity infusions are excluded from the scope of this Agreement. Equity infusions will not, however, be provided in such a manner as to undermine the disciplines in the Agreement.

ARTICLE 8

Transparency

8.1. To the extent necessary to ensure effective implementation of this Agreement, the Parties shall exchange on a regular, systematic basis, all public information of a kind governments make available to their respective national elected assemblies relating to matters covered by this Agreement and its Annexes. Such public information will include at minimum the total amount of government support for new development projects and its share of total development costs, aggregate data on disbursements and repayments relating to direct government supports for commercial aircraft programs, the annual commercial turnovers of the civil aircraft industry as specified in Article 8.5(b) and the aggregate amounts of identifiable indirect benefits received by large civil aircraft manufacturers.

8.2. Furthermore, with regard to prior government commitments for large civil aircraft programs described in Article 2, a complete list of such commitments by the Parties to this Agreement already disbursed or committed shall be separately provided, including information on the type of repayment obligation and the planned period of repayment. Annual disbursements and repayments relating to these programs on an aggregate basis shall also be notified to the other Party for each government providing these supports. In addition, a Party shall notify the other Party to this Agreement of any changes which render the terms and conditions of such support commitments more favorable to the recipient, including: changes in the repayment period, failure to repay the support or reduction of the scheduled repayments.

8.3. Furthermore with regard to future large civil aircraft programs, Parties shall provide, at the time of government commitment, the following specific information in relation to development support for each of the governments providing such support:

- the total amount of government support;
- the share of government support as a percentage of estimated total development cost;
- the anticipated return to the government;
- the planned period of repayment of government support; and
- the forecast number of planes on which the calculations made in accordance with Article 4.2 are based.

8.4. In the course of the consultations provided for under Article 11, the Parties shall exchange information on government commitments and support for each of the governments providing such support, including, but not limited to :

- any changes which render the terms and conditions more favorable to the Recipients including changes in the repayment period, failure to repay the support or reduction of the scheduled repayments; and
- annual disbursements and repayments on a per programme basis for new programmes launched in accordance with Article 4 Such information will be provided at the first regular consultation taking place at least twelve months after the end of the year in which the disbursements and repayments are made.

8.5. In the course of consultations under Article 11,

- (a) the Parties will, on an annual basis, provide information on new government-funded research and development undertaken or initiated during the previous year and on ongoing research and development projects in the aeronautical area, including per programme details on those projects in which large civil aircraft manufacturers participate. This shall include information on the area of activity and the amount of government funding for such projects:
- (b) The Parties will provide information on identifiable benefits derived from indirect, supports for each large civil aircraft programme.

This will include recoupment per programme received from large civil aircraft manufacturers. The following specific information will be provided on an annual basis for each of the governments providing such support:

- 1) the annual commercial turnover of the civil aircraft industry in the Party concerned in relation to products covered by the Agreement;
- 2) the annual commercial turnover in relation to products covered by the Agreement of each firm in the Party concerned which manufactures products covered by the Agreement; and
- 3) the total amount of indirect benefits as defined in Article 5.2. for the civil aircraft industry in relation to the products covered by the Agreement and for each firm involved in the manufacture of such products.

8.6. If a Party considers that additional information directly relevant to the implementation of the provisions of this Agreement is necessary, such information will be provided upon duly motivated request.

8.7. The Parties shall, upon duly motivated request, provide at the time of commitment of new development support non-proprietary information on the critical project appraisal in so far as this relates to the provisions of Article 4.1.

8.8. Any information not in the public domain, which a Party may provide, shall at the request of the Party providing the information, be considered as proprietary. A recipient government shall take all measures necessary to ensure that information thus designated not be disclosed to anyone outside that government even after expiry or termination of the present Agreement. In addition, proprietary information shall not be used in possible trade disputes except for the purposes of confidential internal government discussion and decisions in relation to the implementation of the Agreement.

8.9. The Parties shall, unless otherwise indicated, exchange the information specified above on an annual basis. Any disagreement concerning information to be provided pursuant to this Article shall be resolved through consultations under Article 11.

8.10. The Parties shall provide information on new infusions of equity or changes in equity positions by governments into firms engaged in civil aircraft production, including the amount and type of equity provided,

8.11. The Parties will encourage firms engaged in the manufacture of large civil aircraft to increase the public disclosure of disaggregated financial results of their civil aircraft operations through the separation of reporting on military and civilian aircraft operations and the adoption of lines of business financial reporting. These disaggregated financial results would at a minimum be expected to include information on sources and uses of funds including specific information on revenue, operating income, net assets, capital investment and government equity infusions.

8.12. Nothing in this Agreement shall be construed to require any contracting Party to furnish any information the disclosure of which it considers contrary to its essential security interests.

ARTICLE 9

Exceptional circumstances

9.1. Where, as a result of an unforeseen, exceptional situation, the survival of a significant proportion of the civil aircraft manufacturing activities in one of the Parties (1) and the continued financial viability of the company or the division of a company responsible for such civil aircraft manufacture are put in jeopardy, that Party may derogate temporarily from the disciplines laid down in this Agreement. In this context, the disaggregated financial results of civil aircraft operations will be reported publicly by that company or division (2). This derogation may not be invoked, however, with regard to the disciplines applying to the launch of new civil aircraft programmes as specified in Article 4.

9.2. The Party concerned shall provide notice of its intentions to the other Party and an opportunity for prior consultations unless it is prevented from, doing so for legal reasons and shall in any event notify the other Party immediately of its reasons for invoking this Article and fully disclose the specific measures which it has taken, including the amount and nature of the measures and their expected duration.

- (1) For the purposes of this paragraph, "Parties" shall be deemed to include any of the individual Member States of the Community.
- (2) These disaggregated financial results would at a minimum include information on sources and uses of funds including specific information on revenue, operating income, net assets, capital investment and government equity infusions.

9.3 Specific measures taken by a Party 1,) accordance with this Article shall:

- (a) be limited in scope and duration to the extent strictly necessary to remedy the difficulties referred to in paragraph 1;
- (b) be designed to return as quickly as possible the beneficiary company to commercial viability;
- (c) take due account of the possible implications for other large civil aircraft manufacturers and shall avoid depressing prices on the world market for civil aircraft by the manufacture of inventory for which no firm order exists.

9.4. If, after consultations pursuant to Article 11, a Party determines the; the action taken under this Article significantly undermines the objectives of this Agreement, it shall have the right to suspend some or all of the provisions of this Agreement or to terminate it within 15 days of the conclusion of consultations.

ARTICLE 10

Avoidance of Trade Conflicts and Litigation

10.1. The Parties shall seek to avoid any trade conflict on matters covered by the present Agreement ⁽¹⁾.

10.2. The Parties will not self-initiate action under their national trade laws with regard to government supports granted in conformity with this Agreement for as long as this Agreement is in force, However, nothing in this paragraph shall prevent a Party from abrogating this Agreement on grounds of non-compliance by the other Party.

10.3. In order to avoid trade conflict, the Parties will strongly encourage private parties to request the use of the provisions of Article 11 to resolve any disputes on matters covered by this Agreement. If, however, private petitioners request that action be taken under national laws on matters covered by this Agreement, the petitioners' government will immediately inform the other Party and offer to enter into consultations in accordance with Article 11. The Party against whom such action is brought shall have the right either to suspend the application of some or all the provisions of the present Agreement or to terminate the Agreement 15 days after the conclusion of consultations.

10.4. In the conduct of any investigations of trade allegations concerning products covered by this Agreement that have been initiated under national trade laws as the result of private petitions, the Parties shall, consistent with their law, take account of representations concerning compliance with the terms of this Agreement.

(1) Action with regard to "matters covered by the present Agreement" refers to trade actions relating to direct and indirect government support as defined by this Agreement. It does not include actions relating to dumping, intellectual property protection, or anti-trust or competition laws.

ARTICLE 11

Consultations

11.1. The Parties shall consult regularly and, in any case, at least twice a year, to ensure the correct functioning of the Agreement.

11.2. A Party may request consultations on any development related to the functioning of the present Agreement. Such consultations shall be held not later than 30 days following the date on which the request is received.

11.3. The Parties agree to seek to resolve any disputes within three months of the date of the initial request for consultations. Consultations will not be deemed to be concluded for the purposes of Articles 8 and 9 before this three-month period has expired.

ARTICLE 12

GATT Agreement on Trade in Civil Aircraft

12.1. The Parties shall propose jointly to other signatories of the Aircraft Agreement referred to in Article 1 that disciplines along the lines of those laid down in the present Agreement and the interpretative note given in Annex I be incorporated into the Aircraft Agreement. The Parties shall also propose that the improved dispute settlement provisions agreed in the Uruguay Round be used to resolve any dispute arising out of the implementation of the new Aircraft Agreement.

12.2. The Parties shall ensure that these or similar disciplines are incorporated into the Aircraft Agreement or adopted by key signatories at the earliest possible date, and also to expand the coverage of the disciplines provided by this Agreement to all of the products covered in the Aircraft Agreement.

12.3. If multilateralization has not been achieved in one year, the Parties shall review the question of the continued application of this bilateral Agreement.

ARTICLE 13

Final Provisions

13.1. This Agreement shall enter into force on the date of its acceptance by both Parties.

13.2. This Agreement may be amended by mutual consent of the Parties to take into account any new situation which. may arise including possible amendments to the Aircraft Agreement.

13.3. One year after the entry into force of this Agreement, either party may withdraw from the Agreement. If a Party wishes to withdraw from the present Agreement, it shall notify the other Party in writing of its intentions. The withdrawal shall take effect 12 months after the date on which the notification was received.

ANNEX I

INTERPRETATION OF ARTICLE 4 OF THE GATT AGREEMENT ON TRADE IN CIVIL AIRCRAFT BY SIGNATORIES OF THE AGREEMENT

Article 4 of the GATT Agreement on Trade in Civil Aircraft Thereinafter referred to as "the Agreement") deals with three specific issues:

- government-directed procurement (paragraph 2):
- mandatory sub-contracts (paragraph 3);
- inducements (paragraph 4).

Article 4.1.

Paragraph 4.1. states the general principle, applicable throughout Article 4. that purchasers of civil aircraft ⁽¹⁾ should be free to select supplies on the basis of commercial and technological factors.

Article 4.2.

(Government-Directed Procurement)

This paragraph states that "signatories shall not require airlines, aircraft manufacturers, or other entities engaged in the purchase of civil aircraft, nor exert unreasonable pressure on them, to procure civil aircraft from any particular source, which would create discrimination against suppliers from any signatory".

This means that signatories must abstain from imposing preference policies in favor of or against the suppliers of one or more signatories,

Unreasonable government pressure relating to the selection of suppliers by airlines, aircraft manufacturers or other entities engaged in the purchase of civil aircraft ("purchasers") is also prohibited. "Unreasonable pressure" is any action favoring products or suppliers or which influences procurement decisions in a manner which creates discrimination against suppliers from any other signatory.

(2) For the purpose of this Annex, "civil aircraft" is defined as in Article of the GATT Agreement on Trade in Civil Aircraft.

The signatories agree that the following are examples of practices which are not considered as exerting unreasonable pressure;

- the participation of government or former government representatives on the boards of wholly or partly government-owned purchasers, but only if they act in the best commercial interest of the purchaser concerned and do not influence procurement decisions in a manner which creates discrimination against suppliers from any other signatory;
- government decisions concerning safety and environmental considerations.

Article 4.3.
(Mandatory Subcontracts)

The first sentence states that "signatories agree that the purchase of products covered by the Agreement should be made only on a competitive price, quality and delivery basis". This means that signatories will not intervene to obtain favored treatment for particular firms and that they will not interfere with the selection of vendors in a situation where vendors of different signatories are competing.

By emphasizing that the only factors which should be involved in purchase decisions are price, quality and delivery terms, the signatories agree that Article 4.3. does not permit Government-mandated offsets. Further, they will not require that other factors, such as subcontracting, be made a condition or consideration of sale. Specifically, a signatory may not require that a vendor must provide offset, specific types or volumes of business opportunities, or other types of industrial compensation.

Signatories shall not therefore impose conditions requiring subcontractors or suppliers to be of a particular national origin.

The second sentence of this paragraph states that "in conjunction with the approval or awarding of procurement contracts for products covered by this Agreement a signatory may require that its qualified firms be provided with access to business opportunities on a competitive basis and on terms no less favorable than those available to the firms of other signatories." This means that a signatory may require that the manufacturer not discriminate against the signatory's qualified firms with respect to any bid opportunities and to the evaluation of any competitive bids made by those firms.

Article 4.4.
(Inducements)

This paragraph states that "signatories agree to avoid attaching inducements of any kind to the sale or purchase of civil aircraft from any particular source Which would create discrimination against suppliers from any signatory".

This means that signatories shall refrain from the use of negative or positive linkages between the sale or purchase of civil aircraft and other government decisions or policies which might influence such sale or purchase whenever there is a competition between suppliers of signatories. The following is an agreed illustrative, non-exhaustive list of such prohibited inducements:

- rights and restrictions relating to the airline industry, such as landing or route rights;
- general economic programmes and policies. such as import policies, measures aiming at changes in bilateral trade imbalances, policies on alien workers or debt rescheduling;
- development assistance programmes and policies, such as grant aid, loans and infrastructure financing; it is understood that the use of such assistance for the purchase of civil aircraft does not fall under this category to the extent that the granting of these funds is not conditional on such purchase taking place;
- defense and national security policies and programs.

Without prejudice to Article 4.3., this also means that signatories shall not intervene in any way, nor exert any direct or Indirect pressure on other governments or any entity involved in procurement decisions, including the establishment of any link of a negative or positive character between decisions concerning the procurement of civil aircraft and any other issue or action in any other area which might affect the interest of the importing country.

Articles 4.2. and 4.4.
(Political Representations)

All participants of signatories in the domestic political decision-making process shall not take any action. including, but not limited to, political representations, pressure or inducements to other governments or foreign airlines, which would be contrary to Article 4 as interpreted in this Annex. Signatories shall draw he participants' attention to this interpretation of Article 4 and shall also use their best efforts to assure that the participants do not take such action.

ANNEX II

For the purposes of the present Agreement, the following definitions shall apply:

1. "large civil aircraft": with regard to such aircraft produced in the US by existing manufacturers of large civil aircraft and in the European Community by the Airbus consortium, or their successor entities, all aircraft, as defined in Article 1 of the GATT Agreement on Trade in Civil Aircraft, except engines as defined in Article 1.1(b) thereof, that are designed for passenger or cargo transportation and have 100 or more passenger seats or its equivalent in cargo configuration.
2. "derivative": an aircraft model the major design elements of which are derived from a prior aircraft model.
3. "total development cost", as referred to in Article 4.2.: the following cost items, incurred prior to the date of certification, are those which may be taken into account in assessing the "total development cost" referred to in Article 4.2.:
 - preliminary design
 - engineering design
 - wind-tunnel, structural, system and laboratory tests
 - engineering simulators
 - equipment development work, except for work directly financed by equipment and engine manufacturers
 - flight tests, including associated ground support, and analysis necessary to obtain certification
 - documentation required for certification
 - the cost of manufacture of prototypes and test aircraft, including spares and such modifications as may be necessary to obtain certification, less the estimated fair market value of flight aircraft after refurbishment
 - jigs and tools, except machine tools, for use on specific programs,

4. "production": all manufacturing, marketing and sales activities other than those described under point 3 with the exception of official export credit financing consistent with the Large Aircraft Sector Understanding of the OECD Understanding on Official Export Financing.
 5. "indirect government support": financial support provided by a government or by any public body within the territory of a Party for aeronautical applications, including research and development, demonstration projects and development of military aircraft, which provide an identifiable benefit to the development or production of one or more specific large civil aircraft programs.
 6. "direct government support": any financial support provided by a government or by any public body within the territory of a Party which is provided:
 1. for specific large civil aircraft programs or derivatives or
 2. to specific companies to the extent that large civil aircraft programs or derivatives directly benefit.
 7. "royalty payment": repayment of a certain predetermined amount of development support per aircraft delivered.
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